IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:10MC57-1-MU

JAMES BUCHNOWSKI,)
Petitioner,))
VS.))
DAVID MITCHELL, supt.,	<u> </u>
)
Respondent.))

THIS MATTER comes before the Court upon Petitioner's Petition for Enlargement of Time (Doc. No. 1), filed April 27, 2010.

Petitioner, a state inmate, requests 120 additional days beyond the time limitation period set forth by the Anti Terrorism and Effective Death Penalty Act (AEDPA) in which to file his federal habeas petition pursuant to 28 U.S.C. § 2254. Petitioner states that his time period will soon expire and he has limited access to legal materials. Petitioner also states that he has just submitted another Writ of Certiorari in state court to exhaust a final argument.

While the United States Court of Appeals for the Fourth Circuit has not yet ruled on the issue of whether a district court has the authority to extend AEDPA's deadline for filing a federal habeas petition prior to such a petition being filed, the weight of authority of those courts of appeals that have considered this issue is that district courts do not possess such authority. See United States v. Callahan, 2003 WL 21554914 (5th Cir. July 9, 2003)(unpublished); United States v, Moore, 56 Fed. App'x 686 (6th Cir.

2003)(unpublished); Washington v. United States, 221 F.3d 1354 (10th Cir. 2000)(unpublished); United States v. Leon, 203 F. 3d 162 (2d Cir. 2000)(unpublished). This Court agrees with the above-referenced courts and holds that district courts lack jurisdiction to extend AEDPA's limitation period prior to a federal habeas petition being filed because no case or controversy exists.

Petitioner is reminded that, if he so wishes, he must file a federal habeas petition within the time frame set forth by AEDPA. Petitioner may, in conjunction with filing a federal habeas petition, however, request additional time to supplement his federal habeas petition.

IT IS, THEREFORE, ORDERED that Petitioner's Petition for Enlargement of Time (Doc. No. 1) is **DENIED**.

Signed: April 29, 2010

Graham C. Mullen

United States District Judge